ORIGINAL

No. 14-9496

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
APR 27 2015
OFFICE OF THE CLERK

ELIJAH MANUEL, — PETITIONER
(Your Name)

VS.

CITY OF JOLIET, ET AL., — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

[x] Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States Court of Appeals for the Seventh Circuit and United States District Court, Northern District of Illinois, Eastern Division.

[ ] Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Elijah Manuel
(Signature)

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SUPREME COURT, U.S.

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, Elijah Manuel, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ 0	$ 0	$ 0	$ 0
Self-employment	$ 0	$ 0	$ 0	$ 0
Income from real property (such as rental income)	$ 0	$ 0	$ 0	$ 0
Interest and dividends	$ 0	$ 0	$ 0	$ 0
Gifts	$ 0	$ 0	$ 0	$ 0
Alimony	$ 0	$ 0	$ 0	$ 0
Child Support	$ 0	$ 0	$ 0	$ 0
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$ 0	$ 0	$ 0
Disability (such as social security, insurance payments)	$ 0	$ 0	$ 0	$ 0
Unemployment payments	$ 0	$ 0	$ 0	$ 0
Public-assistance (such as welfare)	$ 0	$ 0	$ 0	$ 0
Other (specify): State pay	$ 9.98	$	$	$ 14.98
Total monthly income:	$ 9.98	$	$	$ 14.98

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	$ 0 $ $ N/A

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	$ 0 $ 0 $ 0

4. How much cash do you and your spouse have? $ 62.91
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial institution	Type of account	Amount you have	Amount your spouse has
Big Muddy River C.C.	prison Account	$ 62.91	$ 0
		$	$
		$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value N/A

☐ Other real estate
Value N/A

☐ Motor Vehicle #1
Year, make & model N/A
Value 0

☐ Motor Vehicle #2
Year, make & model N/A
Value 0

☐ Other assets
Description N/A
Value 0

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	$ 0	$ 0
	$ 0	$ 0
	$ 0	$ 0

7. State the persons who rely on you or your spouse for support.

Name	Relationship	Age
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	$ 0	$ 0
Are real estate taxes included? ☐ Yes ☑ No		
Is property insurance included? ☐ Yes ☐ No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$ 0
Home maintenance (repairs and upkeep)	$ 0	$ 0
Food	$ 0	$ 0
Clothing	$ 0	$ 0
Laundry and dry-cleaning	$ 0	$ 0
Medical and dental expenses	$ 0	$ 0

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 0	$ 0
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$ 0
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$ 0
Life	$ 0	$ 0
Health	$ 0	$ 0
Motor Vehicle	$ 0	$ 0
Other: N/A	$ 0	$ 0
Taxes (not deducted from wages or included in mortgage payments)		
(specify): N/A	$ 0	$ 0
Installment payments		
Motor Vehicle	$ 0	$ 0
Credit card(s)	$ 0	$ 0
Department store(s)	$ 0	$ 0
Other: N/A	$ 0	$ 0
Alimony, maintenance, and support paid to others	$ 0	$ 0
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$ 0
Other (specify): N/A	$ 0	$ 0
Total monthly expenses:	$ 0	$ 0

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes ☑ No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number:

N/A

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? N/A

If yes, state the person's name, address, and telephone number:

N/A

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Do to the fact I am incarcerated, I am unemployed and have no income but only state pay $9.98-$14.98 per month I have attached my 6 months of trust Fund statement

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 23rd, 2015

Elijah Manuel
(Signature)

CERTIFICATE

(TO BE COMPLETED BY PRISON STAFF FOR PRISONERS ONLY THE FOLLOWING IS A STATEMENT BY THE PRISON AUTHORITIES AND NOT THE PRISONER.)

I hereby certify that the plaintiff or petitioner in this action has the sum of $62.91

in his inmate trust fund account at this Correctional Center where he is confined. I further certify that the plaintiff or petitioner has the following securities to his credit according to the records of this Institution.

Scott S. Cahill
Authorized Official

Accountant Advanced
Official's Title

Big Muddy River C.C.
Institution

02-17-15
Date

NOTE: THIS CERTIFICATE MUST BE ACCOMPANIED BY A COPY OF A SIX MONTH LEDGER OF THE PLAINTIFF'S INMATE TRUST FUND ACCOUNT.

Elijah Manuel
INMATE NAME (Please Print)

Elijah Manuel
INMATE SIGNATURE

R-49737
IDOC REGISTRATION NUMBER

3-A-38
INMATE'S HOUSING UNIT & CELL

2-23-2015
DATE

(Please return to resident/inmate after completing. Thank you.)

Trust Fund

Inmate Transaction Statement

REPORT CRITERIA - Date: 08/18/2014 thru End; Inmate: R49737; Active Status Only ? : No; Print Restrictions ? : Yes; Transaction Type: All Transaction Types; Print Furloughs / Restitutions ? : Yes; Include Inmate Totals ? : Yes; Print Balance Errors Only ? : No

Inmate: R49737 Manuel, Elijah **Housing Unit: BMR-03-A -38**

e	Source	Transaction Type	Batch	Reference #	Description		Amount	Balance
						Beginning Balance:		91.50
19/14	Point of Sale	60 Commissary	2317108	786803	Commissary		-24.14	67.36
02/14	Point of Sale	60 Commissary	245742	788010	Commissary		-20.71	46.65
11/14	Point of Sale	60 Commissary	2547113	789114	Commissary		-14.47	32.18
12/14	Payroll	20 Payroll Adjustment	255175		P/R month of 8 2014		17.22	49.40
15/14	Disbursements	81 Legal Postage	258375	Chk #100869	66025, DOC: 523 Fund, 08/18/2014	Inv. Date:	-5.44	43.96
15/14	Disbursements	81 Legal Postage	258375	Chk #100869	66175, DOC: 523 Fund, 08/21/2014	Inv. Date:	-.90	43.06
15/14	Disbursements	81 Legal Postage	258375	Chk #100869	66536, DOC: 523 Fund, 08/29/2014	Inv. Date:	-.90	42.16
15/14	Disbursements	81 Legal Postage	258375	Chk #100869	66741, DOC: 523 Fund, 09/05/2014	Inv. Date:	-.21	41.95
15/14	Disbursements	81 Legal Postage	258375	Chk #100869	66765, DOC: 523 Fund, 09/08/2014	Inv. Date:	-.48	41.47
15/14	Disbursements	81 Legal Postage	258375	Chk #100869	66905, DOC: 523 Fund, 09/12/2014	Inv. Date:	-.90	40.57
08/14	Point of Sale	60 Commissary	2797110	791958	Commissary		-30.14	10.43
09/14	Mail Room	15 JPAY	282200	39121388	Manuel, Debra		25.00	35.43
10/14	Payroll	20 Payroll Adjustment	283138		P/R month of 9 2014		17.22	52.65
15/14	Point of Sale	60 Commissary	2887108	792961	Commissary		-7.57	45.08
17/14	Disbursements	81 Legal Postage	290375	Chk #101264	66938, DOC: 523 Fund, 09/15/2014	Inv. Date:	-4.18	40.90
17/14	Disbursements	81 Legal Postage	290375	Chk #101264	67107, DOC: 523 Fund, 09/18/2014	Inv. Date:	-.69	40.21
17/14	Disbursements	81 Legal Postage	290375	Chk #101264	67308, DOC: 523 Fund, 09/24/2014	Inv. Date:	-.48	39.73
17/14	Disbursements	81 Legal Postage	290375	Chk #101264	67734, DOC: 523 Fund, 10/09/2014	Inv. Date:	-1.19	38.54
28/14	Mail Room	15 JPAY	301200	39832321	Manuel, Debra		25.00	63.54
07/14	Payroll	20 Payroll Adjustment	311138		P/R month of 102014		17.22	80.76
10/14	Point of Sale	60 Commissary	314792	795796	Commissary		-22.56	58.20
17/14	Disbursements	90 Medical Co-Pay	321375	Chk #101607	68228, DOC: 523 Fund, 10/24/2014	Inv. Date:	-5.00	53.20
02/14	Mail Room	15 JPAY	336200	40656454	Manuel, Debra		25.00	78.20
02/14	Point of Sale	60 Commissary	3367110	797557	Commissary		-48.71	29.49
04/14	Mail Room	15 JPAY	338200	40737766	McDaniels, Ruby		25.00	54.49
05/14	Payroll	20 Payroll Adjustment	339138		P/R month of 112014		27.13	81.62
12/14	Point of Sale	60 Commissary	3467110	799157	Commissary		-5.73	75.89
15/14	Disbursements	80 Postage	349375	Chk #101957	69629, DOC: 523 Fund, 12/08/2014	Inv. Date:	-2.03	73.86
23/14	Point of Sale	60 Commissary	3577110	800530	Commissary		-10.83	63.03
08/15	Mail Room	15 JPAY	008200	41829757	Manuel, Debra		25.00	88.03
08/15	Point of Sale	60 Commissary	0087110	801584	Commissary		-12.71	75.32
09/15	Payroll	20 Payroll Adjustment	009138		P/R month of 122014		11.53	86.85
16/15	Disbursements	90 Medical Co-Pay	016375	Chk #102381	70774, DOC: 523 Fund, 01/06/2015	Inv. Date:	-5.00	81.85
21/15	Point of Sale	60 Commissary	021742	803194	Commissary		-18.71	63.14
04/15	Mail Room	15 JPAY	035200	42821494	Manuel, Debra		45.00	108.14
09/15	Point of Sale	60 Commissary	040742	804772	Commissary		-52.00	56.14
13/15	Payroll	20 Payroll Adjustment	044138		P/R month of 1 2015		9.98	66.12

Trust Fund

6:14pm
_jtst_bwside_trans_statement_composite

Inmate Transaction Statement

REPORT CRITERIA Date: 08/18/2014 thru End; Inmate: R49737; Active Status Only ? : No; Print Restrictions ? : Yes; Transaction Type: All Transaction Types; Print Furloughs / Restitutions ? Yes; Include Inmate Totals ? : Yes; Print Balance Errors Only ? : No

nmate: R49737 Manuel, Elijah **Housing Unit: BMR-03-A -38**

Total Inmate Funds:	66 12
Less Funds Held For Orders:	00
Less Funds Restricted:	3 21
Funds Available:	62 91
Total Furloughs:	00
Total Voluntary Restitutions:	00

STRICTIONS

olce Date	Invoice Number	Type	Description	Vendor	Amount
28/2015	71511	Disb	Postage	99999 DOC 523 Fund Inmate Reimburseme	$0 21
05/2015	71805	Disb	Postage	99999 DOC 523 Fund Inmate Reimburseme	$1 40
10/2015	71993	Disb	Library/legal copies	2 DOC 523 Fund Library	$0 20
11/2015	72053	Disb	Postage	99999 DOC 523 Fund Inmate Reimburseme	$1 40
				Total Restrictions:	$3.21

14-9496

NO. _____

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ELIJAH MANUEL,

Petitioner,

v.

CITY OF JOLIET, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is whether an individual's Fourth Amendment right to be free from unreasonable seizure continues beyond legal process so as to allow a malicious prosecution claim based upon the Fourth Amendment. This question was raised, but left unanswered, by this Court in *Albright v. Oliver*, 510 U.S. 266 (1994). Since then, the First, Second, Third, Fourth, Fifth, Sixth, Ninth, Tenth, Eleventh, and D.C. Circuits have all held that a Fourth Amendment malicious prosecution claim is cognizable through 42 U.S.C. § 1983 ("Section 1983"). Only the Seventh Circuit holds that a Fourth Amendment Section 1983 malicious prosecution claim is not cognizable.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

City of Joliet, Illinois, a municipal corporation

Officer Terrence J. Gruber

Officer Thomas Conroy

Sergeant Scott P Cammack

Officer Aaron Bandy

Officer Jeffrey German

Sergeant John Stefanski

Sergeant Joseph Rosado

Officer Jeffery Kneller

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BRIEF FOR THE PETITIONER IN SUPPORT

OPINIONS BELOW

The opinion of the court of appeals, App., *infra*, 1a-5a, affirming the district court's dismissal of the petitioner's complaint is unreported, but is available at 590 F App'x 641, 642. The memorandum order of the district court, App., *infra*, 6a-8a, granting the Respondents' motion to dismiss is also unreported, but is available at 2014 WL 551626.

JURISDICTION

The judgment of the court of appeals was entered on January 28, 2015. This petition for writ of certiorari is filed on April 23, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV

STATEMENT OF THE CASE

The issue in this case arises out of the Petitioner's arrest without probable cause and his subsequent incarceration after he became subject to legal process as a result of police misconduct. Under the Fourth Amendment, an individual has a right to be free from

unreasonable search and seizure, i.e., except, upon probable cause. U.S. CONST. amend. IV Under current law, a Fourth Amendment false arrest claim begins at the time of an arrest and ends when the plaintiff undergoes legal process, such as an arraignment. *Wallace v. Kato*, 549 U.S. 384, 389 (2007). After a plaintiff undergoes legal process, any damage the plaintiff suffers is actionable as a malicious prosecution claim. *Id.* at 390.

Although this Court has never fully "explored the contours of a Fourth Amendment malicious prosecution suit under § 1983" (*Wallace*, 549 U.S. at 390, n.2 (citing 42 U.S.C. § 1983)), the plurality opinion and some concurring opinions in *Albright v. Oliver* suggested that a malicious prosecution claim such as the Petitioner's in the present case should be judged under the Fourth Amendment. 510 U.S. 266 (1994). This Court, however, did not decide this issue because the petitioner in *Albright* did not raise it.

Since *Albright*, eight circuit courts of appeal have expressly allowed Fourth Amendment malicious prosecution claims, holding that legal process, such as an arraignment, does not end a plaintiff's Fourth Amendment right to be free from unreasonable seizure. *See Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 99 (1st Cir. 2013) (compiling cases). Two circuits have implicitly recognized a Fourth Amendment malicious prosecution claim and one circuit has not directly addressed the issue. The Seventh Circuit stands alone among circuits in not allowing a federal malicious prosecution claim grounded on the Fourth Amendment. *See Newsome v. McCabe*, 256 F 3d 747, 751. This split means that geography, not the Constitution nor this Court's jurisprudence, determines whether or not an individual has a federal remedy for a basic civil rights violation.

The Seventh Circuit's initial decision on this issue in *Newsome* was not based on an analysis of the extent of the Fourth Amendment protections afforded to an individual who is

subject to the judicial process, but rather on what it considered "the narrowest ground" of the various opinions in *Albright*. Since *Newsome*, the Seventh Circuit has hinted that its decision did not foreclose a Fourth Amendment malicious prosecution claim (*Johnson v. Saville*, 575 F.3d 656, 663-64 (7th Cir. 2009) ("*Newsome* left open the possibility of a Fourth Amendment claim against officers who misrepresent evidence to prosecutors."); avoided the issue (*Julian v. Hanna* 732 F.3d 842, 846 (7th Cir. 2013)); or twisted itself in circles in order to claim it was not an "outlier" (*Llovet v. City of Chicago*, 761 F.3d 759, 763 (7th Cir. 2014), *cert. denied* 135 S. Ct. 1185 (2015))—until the opinion below, when, despite acknowledging it stands alone among circuits, it stubbornly chose to adhere to its initial decision in *Newsome*:

> Next Manuel argues that we should reconsider our holding in *Newsome* and recognize a federal claim for malicious prosecution under the Fourth Amendment regardless of the available state remedy. By his count, ten other circuits have recognized federal malicious-prosecution claims under the Fourth Amendment—assuming that the plaintiff has been seized in the course of the malicious prosecution.
>
> As we stated in our most recent endorsement of *Newsome's* rationale: "When, after the arrest or seizure, a person is not let go when he should be, the Fourth Amendment gives way to the due process clause as a basis for challenging his detention."

Pet. App. A-3.

A. Factual Background

As this case was decided on a motion to dismiss, this Court should accept as true the facts alleged by the Petitioner below (*Ashcroft v. Iqbal*, 556 U.S. 662, 696 (2009)) as the courts below have done.

In the dark, early hours of March 18, 2011, Elijah Manuel ("Manuel" or "Petitioner") was riding in the passenger seat of his car in the city of Joliet, Illinois (Court of Appeals ("C.A.") Sep. Jt. App. 58) when the police pulled over his car. The police would later say that Manuel's

brother, who was driving the car, had failed to signal a turn. C.A. Sep. Jt. App. 113. Two police officers, Terrence Gruber and Thomas Conroy, stepped out of their police vehicle and approached Manuel's car. C.A. Sep. Jt. App. Without warning, Gruber opened the passenger door, grabbed Manuel by the arm and pulled him out of the car. C.A. Sep. Jt. App. 23, 24, 58. Gruber forced Manuel to the ground and beat him. C.A. Sep. Jt. App. 24, 25, 29, 58. Gruber handcuffed Manuel and yelled: "You remember me? I got you now you fucking nigger." C.A. Sep. Jt. App. 24, 29, 58-59, 63. At some point, Sergeant John Stefanski, Sergeant Joseph Rosado, Officer Aaron Bandy, and Officer Jeffrey German of the Joliet Police Department also arrived at the scene. C.A. Sep. Jt. App. 25, 60-62. The police searched Manuel's car, ripping the floor mats and slashing the steering wheel in the process. C.A. Sep. Jt. App. 63.

After handcuffing him, Gruber patted Manuel down and found a bottle of vitamins in Manuel's pocket. C.A. Sep. Jt. App. 22, 59. The police officers conducted a field test on the vitamins and lied about its results by stating the pills tested positive for ecstasy. C.A. Sep. Jt. App. 22, 26, 30, 63, 64, 114. They arrested Manuel and brought him to a police station. C.A. Sep. Jt. App. 23, 64. There, the police officers at the scene of the arrest, along with Officer Scott Cammack, an evidence technician, again tested the pills. C.A. Sep. Jt. App. 26, 45, 64, 115. Again, the results showed that the pills were not a controlled substance.

Yet, the police officers maintained their lie. C.A. Sep. Jt. App. 26, 64, 115. In order to bring charges and an indictment against Manuel, the police officers included false statements in their police report, such as: when Gruber approached the car, he observed Manuel moving "quickly towards the center console" (although Gruber was standing outside of the car, on a dark street in the middle of the night, no less) and he smelled "the scent of burnt cannabis emitting from inside the vehicle" (notably, no cannabis was ever found, despite Gruber's apparent,

superlative night vision); when Gruber found pills in Manuel's pocket "Manuel began to run away from officers" (although Manuel was in the actual physical custody of Gruber); Gruber "knew the pills to be ecstasy"; and "the pills did test positive for ecstasy" (although the pills were not ecstasy, as later determined by the state police). C.A. Sep. Jt. App. 22-24, 45, 113-14. In addition to fabricating the field test results, the police report omitted the fact that cannabis was never found in the car or at the scene of the incident. C.A. Sep. Jt. App. 22-23, 113-14.

That same day, March 18, 2011, Manuel was booked and sent to the county jail. C.A. Sep. Jt. App. 65. During Manuel's incarceration, the aforementioned Joliet police officers continued to knowingly falsify and fabricate evidence to ensure that no one questioned Manuel's continued imprisonment. C.A. Sep. Jt. App. 103. During his grand jury testimony on March 30, 2011, Gruber repeated the fabricated information from the police report by testifying that the pills found in Manuel's pocket tested positive for ecstasy and that he had smelled burnt cannabis as he approached the car. C.A. Sep. Jt. App. 116-21. Manuel was arraigned on April 8, 2011,[1] on the basis of Gruber's grand jury testimony and the fabricated, and omitted, evidence in the police report. C.A. Sep. Jt. App. 103. Manuel's detention continued beyond arraignment. *Id.* The prosecutor also relied upon the fabricated information received from the aforementioned Joliet

[1]Although this is the date of Manuel's arraignment, Manuel was subject to legal process prior to arraignment; however, the exact date is not contained within the record below. As Respondents noted in their appellate court response brief: "Although [arraignment] is not the time at which he became subject to legal process, it is the only date provided relative to the judicial proceedings." C.A. Resp't Resp. Br. 8-9, ECF No. 24. However, the date of legal process is irrelevant at this stage because Manuel's statute of limitations began when the charges terminated in his favor. *Wallace v. Kato*, 549 U.S. 384, 388 (2007) ("[I]t is the standard rule that accrual occurs when the plaintiff has a complete and present cause of action."); *Johnson*, 575 F.3d at 659 (listing the common law elements of a malicious prosecution claim in Illinois, including that the charges terminate in favor of the plaintiff).

police officer to prosecute Manuel. *Id.*

A state police lab report dated April 1, 2011, a week before Manuel's arraignment, found that the pills were not a controlled substance. C.A. Sep. Jt. App. 48. Yet, he was still arraigned and it was not until May 4, 2011, that the prosecutor motioned for a dismissal of the charges based on the lab report. C.A. Sep. Jt. App. 28, 65. Based on that motion, the judge dropped the charges and ordered them *nolle prosequi* (i.e., unwilling to pursue or prosecute) on May 4, 2011. C.A. Sep. Jt. App. 44, 65. Manuel was released from jail the next day, twenty-six days after his arraignment and seven weeks after his arrest. C.A. Sep. Jt. App. 65, 103.

During his incarceration, Manuel could not work or complete his college coursework. C.A. Sep. Jt. App. 27. As a result, Manuel had to drop his college courses; he was nonetheless forced to pay for the dropped classes. *Id.* While he was in jail he could not pay his bills, including his student loans and other bills. *Id.* When these bills came due he defaulted on them; some of the bills were sent to collection agencies which affected his credit score. *Id.* He also suffered harm to his reputation. C.A. Sep. Jt. App. 66.

B. Procedural History

Manuel filed a *pro se* complaint for the present action on April 10, 2013. C.A. Sep. Jt. App. 34. With the assistance of appointed counsel, Manuel filed a First Amended Complaint on September 20, 2013; the First Amended Complaint alleged that Manuel suffered injuries as a result of various civil rights violations, including malicious prosecution, which arose out of the Joliet police officers' and Will County Sheriff's Office employees' actions from March 18, 2011 until May 5, 2011. C.A. Sep. Jt. App. 55-80.

On December 4, 2013, the City of Joliet and the six named Joliet police officers ("Respondents") filed a motion to dismiss, alleging that Manuel's claims were time barred. C.A.

Sep. Jt. App. 81-86.[2] Manuel filed a response to the motions to dismiss on January 8, 2014, and upon request of the District Court, filed a modified response on February 7, 2014. C.A. Sep. Jt. App. 87-99, 101-21; No. 13-CV-3022 (N.D. Ill. Feb. 7, 2014), ECF No. 40, 41. On February 12, 2014, the District Court entered a Memorandum Order granting the Respondents' motion to dismiss, holding that "the limitations bar erected by Section 1983 cannot be overcome by a nonviable Illinois-based federal malicious prosecution claim[.]" Pet. App. B-3. The District Court acknowledged that the Seventh Circuit was an outlier on the issue presented by Manuel but stated:

> What Manuel's counsel must argue then—and they do with vigor—is that *Newsome* should be revisited and "rejected in the present case."
>
> This Court likewise rejects the invitation by Manuel's counsel to create still another topsy-turvy world—if a change from *Newsome* and its progeny is to be made, it must be left to our Court of Appeals to do so.

Pet. App. B-2, B-3.

On March 14, 2014, Manuel timely appealed the dismissal of his case to the U.S. Court of Appeals for the Seventh Circuit against the Respondents. No. 13-CV-3022 (N.D. Ill. March 14, 2014), ECF No. 47, 48. On January 28, 2015, the Seventh Circuit Court of Appeals, in a *per curiam* decision, affirmed its holding in *Newsome v. McCabe*, 256 F.3d 747 (7th Cir. 2010), and held that a Section 1983 malicious prosecution was not cognizable under the Fourth Amendment. Pet. App. A-1-A-5. The Seventh Circuit also acknowledged its status as an outlier among the circuits but stated: "While Manuel's counsel advanced a strong argument, given the position we

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[2] On December 9, 2013, the Will County Sheriff defendants also filed a motion to dismiss. No. 13-CV-3022 (N.D. Ill. Dec. 9, 2013), ECF No. 32, 33. The District Court granted the Will County Sheriff defendants' motion to dismiss on January 13, 2014. C.A. Sep. Jt. App. 14; No. 13-CV-3022 (N.D. Ill. Jan. 13, 2014), ECF No. 39. Petitioner does not appeal the dismissal of the Will County defendants.

have consistently taken in upholding *Newsome*, Manuel's argument is better left for the Supreme Court." Pet. App. A-3-A-4.

In light of the deep divisions between the Seventh Circuit and the ten other circuits, Manuel should be given an answer that is not merely based upon a Seventh Circuit precedent which has been repeatedly rejected by the other circuits. We ask that this Court definitively provide him with an answer as to the availability of a Fourth Amendment malicious prosecution claim.

REASONS FOR GRANTING THE PETITION

This Court should grant the present petition for a writ of certiorari because: (1) there is a disagreement on this issue among the circuits; (2) the decision below from the Seventh Circuit is on the wrong side of this issue; (3) this issue is a recurring issue of national importance; and (4) this case is an ideal vehicle to decide the issue.

I. The Circuits Disagree About the Availability of a Fourth Amendment Malicious Prosecution Action.

A. *Albright* Advanced the Fourth Amendment Approach.

The division between the Seventh Circuit and the ten other circuits that have ruled on this issue arises out of this Court's decision in *Albright v. Oliver,* 510 U.S. 266 (1994). In *Albright*, a plurality of this Court expressly held that Albright should have brought his malicious prosecution claim as a Fourth Amendment claim rather than as a due process claim. *Albright*, 510 U.S. at 271 ("We hold that it is the Fourth Amendment, and not substantive due process, under which petitioner Albright's claim must be judged."). The plurality reasoned that "where a particular Amendment provides an explicit textual source for a constitutional protection," such Amendment

should be relied upon rather than a more generalized notion of due process. *Id.* at 273 (internal citations omitted). Further, the plurality noted that this Court has, in the past, held that the Fourth Amendment regulates criminal prosecutions that result in liberty deprivations. *Id.* (citing *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975)).

Justice Souter, who concurred in the judgment but did not join in the plurality opinion, also noted that Albright's facts stated a Fourth Amendment claim. Justice Souter further noted that the boundaries of substantive due process did not need to expand to cover Albright's facts because: "[Albright's] case calls for no substantial burden on liberty beyond what the Fourth Amendment is generally thought to redress already." *Albright*, 510 U.S. at 288-89 (Souter, J., concurring). He noted that recognizing a Fourth Amendment claim for malicious prosecution in Albright's circumstance was not novel because many courts of appeals previously recognized such a claim.

> "Indeed, it is not surprising that rules of recovery for such harms have naturally coalesced under the Fourth Amendment, since injuries usually occur only after an arrest or other Fourth Amendment seizure, an event that normally follows promptly (three days in this case) upon the formality of filing an indictment, information or complaint."

Id. at 290. (Souter, J., concurring).

Writing separately in a concurring opinion, Justice Kennedy, joined by Justice Thomas, agreed with the plurality opinion that Albright did not state a claim for a substantive due process violation. *Id.* at 283. (Kennedy, J. concurring, joined by Thomas, J.) (opining that substantive due process does not protect against criminal prosecution without probable cause). However, Justice Kennedy further opined that Albright may have stated a claim for a procedural due process violation. Justice Kennedy also noted that, under Supreme Court jurisprudence, Section 1983 only provides a remedy for procedural due process violations if state law does not provide

an adequate post-deprivation remedy. *Id.* at 283-84 (citing *Parratt v. Taylor*, 451 U.S. 527, 535-44 (1981)).

After *Albright*, an overwhelming majority of the courts of appeal have adopted the approach advanced by the plurality and Justice Souter—malicious prosecution accompanied by a liberty deprivation constitutes a Fourth Amendment violation, cognizable through Section 1983. However, the Seventh Circuit adopted Justice Kennedy's approach by holding that a malicious prosecution claim is only cognizable as a Section 1983 procedural due process claim if state law does not provide an adequate remedy. *Newsome*, 256 F.3d 747, 751 (7th Cir. 2001).

B. Ten Federal Circuits Correctly Hold That Malicious Prosecution is Actionable as a Fourth Amendment, Section 1983 Claim.

After *Albright*, eight circuit courts of appeals have expressly held that legal process, such as an arraignment, does not end a plaintiff's Fourth Amendment right to be free from unreasonable seizure. "There is now broad consensus among the circuits that the Fourth Amendment right to be free from seizure but upon probable cause extends through the pretrial period " *Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 99 (1st Cir. 2013) (compiling cases). These eight circuits have held that malicious prosecution is cognizable through a Section 1983 Fourth Amendment claim. *See id.*, *see also Swartz v. Insogna*, 704 F.3d 105, 112 (2d Cir. 2013) ("[W]e have said, to be actionable under section 1983, there must be a post-arraignment seizure, the claim being grounded ultimately on the Fourth Amendment's prohibition of unreasonable seizure."); *Manganiello v. City of New York*, 612 F.3d 149, 160-61 (2d Cir. 2010) ("In order to prevail on a § 1983 claim against a state actor for malicious prosecution, a plaintiff must show a violation of his rights under the Fourth Amendment and must establish the elements of a malicious prosecution claim under state law."); *McKenna v. City of Philadelphia*, 582 F.3d 447, 461 (3d Cir. 2009) ("To prevail on a malicious prosecution claim under section 1983, a plaintiff

must show that: (1) the defendants initiated a criminal proceeding; (2) the criminal proceeding ended in the plaintiff's favor; (3) the proceeding was initiated without probable cause; (4) the defendants acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding."); *Evans v. Chalmers*, 703 F.3d 636, 647 (4th Cir. 2012) ("[A] malicious prosecution claim under § 1983 is properly understood as a Fourth Amendment claim for unreasonable seizure which incorporates certain elements of the common law tort.") (quoting *Lambert v. Williams*, 223 F.3d 257, 261 (4th Cir. 2000)); *Sykes v. Anderson*, 625 F.3d 294, 308 (6th Cir. 2010) ("The Sixth Circuit recognize[s] a separate constitutionally cognizable claim of malicious prosecution under the Fourth Amendment, which encompasses wrongful investigation, prosecution, conviction, and incarceration.") (internal quotations omitted) (citing *Barnes v. Wright*, 449 F.3d 709, 715–16 (6th Cir. 2006)); *Novitsky v. City of Aurora*, 491 F.3d 1244, 1257-58 (10th Cir. 2007) ("In this circuit, when addressing § 1983 malicious prosecution claims, we use the common law elements of malicious prosecution as the starting point of our analysis; however, the ultimate question is whether plaintiff has proven the deprivation of a constitutional right. We look to both the Fourth and Fourteenth Amendments.") (internal quotations omitted); *Grider v. City of Auburn*, 618 F.3d 1240, 1256 (11th Cir. 2010) (identifying "malicious prosecution as a violation of the Fourth Amendment and a viable constitutional tort cognizable under § 1983"); *Pitt v. District of Columbia*, 491 F.3d 494, 511 (D.C. Cir. 2007).

The Fifth and Ninth Circuits have also implicitly recognized a Section 1983 malicious prosecution claim. *See Castellano v. Fragozo*, 352 F.3d 939, 959 (5th Cir. 2003) (en banc) ("[W]e adhere to the view that the umbrella of the Fourth Amendment, broad and powerful as it is, casts its protection solely over the pretrial events of a prosecution."). *Awabdy v. City of*

Adelanto, 368 F.3d 1062, 1069 (9th Cir. 2004) ("We do not interpret *Albright* as establishing a rule that Fourth Amendment violations are the only proper grounds for malicious prosecution claims under § 1983. . . . [W]e have continued to follow our earlier precedents establishing that malicious prosecution with the intent to deprive a person of equal protection of the law or otherwise to subject a person to a denial of constitutional rights is cognizable under § 1983.") (internal quotations omitted). The Eighth Circuit has not explicitly ruled on the issue. *Kurtz v. City of Shrewsbury*, 245 F.3d 753 (8th Cir. 2001).[3]

C. The Seventh Circuit Wrongly Holds That Malicious Prosecution is Only Actionable as a Procedural Due Process, Section 1983 Claim.

In stark contrast to all of the other circuits that have considered this issue, the Seventh Circuit stubbornly refuses to recognize a federal malicious prosecution claim grounded on the Fourth Amendment, based not on principles of constitutional law, but on a misreading of *Albright*. The Seventh Circuit interpreted this Court's splintered opinion in *Albright v. Oliver* to mean that an individual with an adequate state law remedy does not have a federal malicious

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[3] The Eighth Circuit has held that it will not recognize a Section 1983 malicious prosecution claim that "does not allege a constitutional injury." *Kurtz*, 245 F.3d at 758. However, in both of the leading cases within the Eighth Circuit, the plaintiff involved did not show that the defendant lacked probable cause for the arrest or prosecution, a key element of common law malicious prosecution as well as any Fourth Amendment claim. *Id.at 757; Joseph v. Allen*, 712 F.3d 1222, 1226-28 (8th Cir. 2001).

More recently, the Eighth Circuit opened itself to the possibility of a Fourth Amendment malicious prosecution claim, but did not explicitly rule on the issue. *Harrington v. City of Council Bluffs, Iowa* 678 F.3d 676, 679, 680 (8th Cir. 2012) ("If malicious prosecution is a constitutional violation at all, it probably arises under the Fourth Amendment. . . . Our sister circuits have taken a variety of approaches on the issue of whether or when malicious prosecution violates the Fourth Amendment. We need not enter this debate now.") (internal citations omitted).

prosecution claim. *Newsome*, 256 F.3d at 750-51 (interpreting *Albright v. Oliver*, 510 U.S. 266 (1994)).

II. The Decision Below is Wrong.

A. The Seventh Circuit's Rule Raises Constitutional Concerns.

The Seventh Circuit's decision in *Newsome* and in the instant case are contrary to the notion that the Fourth Amendment protects against liberty deprivations pending trial. The Seventh Circuit's rule, therefore, is contrary to the Constitution and this Court's Fourth Amendment jurisprudence.

In *Gerstein*, this Court held that a neutral and detached magistrate must make a probable cause determination to hold a criminal suspect. *Gerstein*, 420 U.S. at 112. An individual cannot be held indefinitely on just a police officer or prosecutor's subjective belief in probable cause. The holding in *Gerstein* was based squarely on the guarantees of the Fourth Amendment. As this Court explained: "The Fourth Amendment was tailored explicitly for the criminal justice system, and its balance between individual and public interests always had been thought to define the 'process that is due' for seizures of person or property in criminal cases, including the detention of suspects pending trial." *Gerstein*, 420 U.S. at 124, n.27 (1975). Thus, an individual has a Fourth Amendment right to a neutral determination of probable cause before an extended restraint of liberty following arrest. This Fourth Amendment right is subverted when, as in this case, police officers intentionally present fabricated and falsified information. The very purpose of a probable cause determination by a neutral judge is undermined and the Fourth Amendment is violated.

This logical reliance on *Gerstein* is supported by the Framers' original intent. As this Court noted: "the Framers considered the matter of pretrial deprivations of liberty and drafted the

Fourth Amendment to address it." *Albright*, 510 U.S. at 274. The Framers originally drafted the Fourth Amendment in an era when the British imperial powers would produce generalized warrants and use the warrants as a basis for property searches and seizures and arrest. Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547, 675-76 (1999).

Today, abuse of the legal system manifests itself in the issuance of a probable cause determination on the basis of fabricated evidence. When a police officer presents false information which forms the basis of a neutral magistrate's probable cause determination, the Fourth Amendment is still at stake. Therefore, the Seventh Circuit decision below and in *Newsome* strip individuals of their Fourth Amendment rights and, instead, only provide such individuals with a nebulous procedural due process right.

Fortunately, the vast majority of the circuits have upheld this Court's Fourth Amendment jurisprudence and rule in *Gerstein*. Such courts have held that a Fourth Amendment malicious prosecution claim will exist both when an individual is first seized *before* legal process (*Pitt*, 491 F.3d at 510-12), and *after* legal process (*Hernandez-Cuevas*, 723 F.3d at 99-100).

For example, in *Pitt*, a case factually similar to the present case, the D.C. Circuit held that the plaintiff, Pitt, had viable claims for both a Fourth Amendment false arrest and a Fourth Amendment malicious prosecution claim. *Pitt*, 491 F.3d at 508-12. Pitt was arrested without a warrant or probable cause (giving rise to his false arrest claim). *Id.* at 499, 508-09. After the arrest, one of the police officers who arrested Pitt then gave the prosecutors an affidavit which included a detailed description of the robbery but omitted identifications exonerating Pitt as well as Pitt's alibi. *Id.* at 499. The next day, based upon the affidavit, a magistrate ordered Pitt committed to a halfway house where he was held for ten days. *Id.* at 499-500. Pitt brought Fourth Amendment causes of action for both false arrest and malicious prosecution under Section 1983.

The court held that Pitt had a cognizable Fourth Amendment false arrest claim after his arrest, *and* a cognizable Fourth Amendment malicious prosecution claim after he was held pursuant to legal process at the halfway house for ten days without probable cause. *See Pitt*, 491 F.3d at 499-500, 510-11. The court held that Pitt suffered a seizure after the magistrate ordered him detained at the halfway house even though he was already in custody after his arrest. *Id.*

Also, in *Hernandez-Cuevas*, a magistrate judge issued a warrant for Hernandez-Cuevas on the basis of a false identification from Taylor, an FBI agent. *Hernandez-Cuevas*, 723 F.3d at 95. The First Circuit held that Hernandez-Cuevas had a Fourth Amendment malicious prosecution claim stating: "Though the Fifth and Sixth Amendments generally control events following the arrest and arraignment of an individual accused of committing a crime, we are convinced that an individual does not lose his Fourth Amendment right to be free from unreasonable seizure when he becomes detained pursuant to judicial process." *Id.* at 99-100.

The First and D.C. Circuits correctly held that the Fourth Amendment covers post-legal process malicious prosecution claims, not just false arrest. Ten courts of appeal recognize, post-*Albright*, that the Fourth Amendment covers malicious prosecution claims if such a claim includes a liberty deprivation absent probable cause. The Seventh Circuit's contrary holding that the Fourth Amendment does not cover the full period of pretrial deprivations produces an unreasonable gap in an individual's constitutional protections. *See* John T. Ryan, Jr., Note, *Malicious Prosecution Claims under Section 1983: Do citizens have federal recourse?* 64 GEO. WASH. L. REV. 776, 808 (1996) ("[T]here potentially exists a gap in constitutional protection for instances of intentional official misconduct, at least in the Seventh Circuit."). In sum, the Seventh Circuit's decision to deny Manuel a Fourth Amendment malicious prosecution claim is contrary to the Constitution.

We do acknowledge that the Seventh Circuit does not totally foreclose an individual from seeking redress for a post-legal process deprivation of liberty. The Seventh Circuit allows for a procedural due process claim if such individual does not have an adequate state remedy. However, this Court has made clear that: "Where a particular Amendment provides an explicit textual source for a constitutional protection," such Amendment should be relied upon rather than a more generalized notion of due process. *Albright,* 510 U.S. at 266 (internal citations omitted).

B. The Seventh Circuit Improperly Derived a Holding from the Plurality Decision in *Albright.*

The Seventh Circuit holding is not based on any analysis of Fourth Amendment jurisprudence but, rather, a misreading of the various opinions in *Albright v. Oliver*. The Seventh Circuit interpreted these splintered opinions to mean that an individual with an adequate state law remedy does not have relief for a malicious prosecution claim through Section 1983. *Newsome,* 256, F.3d at 750-751 (citing *Albright*, 510 U.S. 266 (1994)). However, *Albright* did not preclude a Fourth Amendment claim based upon malicious prosecution as the petitioner, Albright, did not bring such a claim and the Justices did not decide the issue.

A majority of the Justices in *Albright* agreed that a plaintiff seeking relief for a constitutional infringement should seek relief under an express constitutional provision, if available, rather than bringing a claim for substantive due process. *Albright,* 510 U.S. at 271-72, 275-76 (Rehnquist, C.J., joined by O'Connor, Scalia, & Ginsburg, JJ.) (Scalia, J., concurring) (Ginsburg, J., concurring) (Souter, J., concurring). The four Justice plurality opinion stated that the petitioner in *Albright*, by bringing a malicious prosecution claim, did not sufficiently allege a substantive due process constitutional infringement. *Id.* at 275.

Writing separately in a concurring opinion, Justice Kennedy, joined by Justice Thomas, agreed. *Id.* at 283. (Kennedy, J. concurring, joined by Thomas, J.) (opining that substantive due process does not protect against criminal prosecution without probable cause). Justice Kennedy further opined that, although Albright did not state a claim for a violation of substantive due process, he may have stated a claim for a violation of procedural due process. However, Justice Kennedy noted that, under Supreme Court jurisprudence, Section 1983 only provides a remedy for violations of procedural due process of a liberty interest if state law does not provide an adequate post-deprivation remedy. *Id.* at 283-84 (*citing Parratt*, 451 U.S. at 535-44).

The Seventh Circuit considers Justice Kennedy's decision as the "narrowest grounds of decision", citing to *Marks v. United States,* with no actual analysis of the decision or its applicability to the *Albright* decision. In a different opinion addressing a different issue, the Seventh Circuit, as other courts of appeal have done, analyzed in detail the limited usefulness of the *Marks* rule.

> When, however, a concurrence that provides the fifth vote necessary to reach a majority does not provide a 'common denominator' for the judgment, the *Marks* rule does not help to resolve the ultimate question. This means that *Marks* applies only when one opinion is a logical subset of other, broader opinions. When it is not possible to discover a single standard that legitimately constitutes the narrowest ground for a decision on that issue, there is then no law of the land because no one standard commands the support of a majority of the Supreme Court.

Gibson v. Am. Cyanamid Co., 760 F.3d 600, 619 (7th Cir. 2014) (internal citations and quotations omitted) *petition for cert. filed* (U.S. Jan. 16, 2015), No. 14-849.

In *Marks,* the opinions compiled for a holding all analyzed the same constitutional provision (the First Amendment). *Id.* (citing *Marks. v. U.S.*, 430 U.S. 188 (1977)). It would be impossible to apply the *Marks* rule to plurality and concurring opinions that interpret two different constitutional provisions (for example, procedural due process and substantive due

process) to furnish a disposition as to the applicability of a Fourth Amendment malicious prosecution claim as the Seventh Circuit did in *Newsome*. As the Seventh Circuit itself phrased it: "Asking which opinion is narrower than the other would be like examining a square with a width that is the same length as the diameter of a circle, and futilely asking which is narrower, the square or the circle." *Gibson*, 760 F.3d at 619. Justice Kennedy's concurring opinion, agreeing with the plurality that Albright did not have a substantive due process right to be free from malicious prosecution, did not narrow the plurality's opinion but instead went beyond the reach of the plurality opinion by examining Albright's claim as a procedural due process claim.

Instead, only one rule can be extrapolated from the opinions of the plurality and Justice Kennedy: there is no substantive due process right to be free from prosecution, but upon probable cause. On the other hand, one can extrapolate from the plurality opinion and Justice Souter's concurrence that the facts in this case constitute a Fourth Amendment claim because Manuel suffered a pretrial deprivation of liberty. The plurality stated that pretrial deprivations of liberty are governed by the Fourth Amendment. *Albright*, 510 U.S. at 274. "The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it." *Id.* (plurality opinion). This means that the Fourth Amendment governs not just arrest but also criminal prosecutions. *Id.* "We have in the past noted that the Fourth Amendment's relevance to the deprivations of liberty that go hand in hand with criminal prosecutions." *Id.* (citing *Gerstein*, 420 U.S. at 114.). Justice Souter agreed with this analysis. He noted that Albright's facts form the basis of the long-held notions of the Fourth Amendment. "Indeed it is not surprising that rules of recovery for such harms have naturally coalesced under the Fourth Amendment seizure, an event that normally follows promptly (three days in this case) upon the formality of filing an indictment, information or complaint." *Id.* at 290.

Therefore, contrary to the reasoning of the Seventh Circuit, it can safely be said that five Justices did not rule out the possibility of a Fourth Amendment malicious prosecution claim. As a result, the Seventh Circuit improperly drew a rule on the unavailability of a Fourth Amendment claim from Justice Kennedy's concurring opinion. If the Seventh Circuit wanted to rely on the rule in *Marks v. United States*, it should have analyzed Justice Souter's concurrence as the "narrowest grounds" on which a majority of the justices agreed. *Marks*, 430 U.S. at 193. At the very least, it should have acknowledged that this Court has not yet determined whether or not such claims are cognizable through the Fourth Amendment or procedural due process. The Seventh Circuit would have then analyzed *Albright* correctly, although it still would have reached the wrong result.

III. This Recurring Issue Is of National Importance.

The availability of a malicious prosecution claim is a recurring issue of national importance. It will continue to be a recurring issue for the circuit courts until this Court decides the issue: "Because of the absence of an opinion of the Court [in *Albright*] and the conflicting views of those Justices who only concurred in the judgment, the issue of the availability of § 1983 to pursue malicious prosecution-type claims will continue to be an area of uncertainty." STEVEN H. STEINGLASS, SECTION 1983 LITIGATION IN STATE COURTS § 3:11 (2014). Providing an answer is important, however, because the courts of appeals continue to be divided on the issue and the "divergent application of Section 1983 claims based merely on geography is contrary to the need for uniform interpretation of federal law." Lyle Kossis, Note, *Malicious Prosecution Claims in Section 1983 Lawsuits*, 99 VA. L. REV. 1635, 1636 (2013).

Further, the continuation of an individual's Fourth Amendment right beyond legal

process is an issue of national importance for several reasons. Recognition of a Section 1983 malicious prosecution claim has several advantages to a Section 1983 false arrest claim. A Fourth Amendment claim for malicious prosecution provides an individual with remedies for damages he would not otherwise have for a false arrest or false imprisonment claim. John R. Williams, *Beyond Police Misconduct and False Arrest*, 8 SUFFOLK J. TR. APP. ADVOCACY 39, 42 (2003) [hereinafter Williams, *Beyond Police Misconduct*]. An individual who is the target of malicious prosecution will have access to damages from legal process until the charges terminate in his or her favor (assuming only a pretrial deprivation of liberty), a period of time that can stretch into many months. *Id.* On the other hand, false arrest usually only lasts for a few days, before legal process cuts it off. *Id.*

As the Seventh Circuit itself acknowledged in a case involving an Indiana prosecution: "[Julian] could have sued for false arrest. But such charges would not give rise to *adequate* remedies for the wrongs that Julian alleges." *Julian*, 732 F.3d at 846 (emphasis in original). There, the court recognized that the damages attributable to false arrest or imprisonment are usually quite small when compared with the damages attributable to malicious prosecution. *Id.* at 846-47 In the present case, Petitioner Manuel was held, unlawfully, for only a few days prior to his legal process. However, he was held without probable cause for a total of seven weeks.

Because of the added length of the seizure, a malicious prosecution claim encompasses a greater variety of injuries: "The plaintiff [in a malicious prosecution suit] may recover compensation for any arrest or imprisonment, including damages for discomfort or injury to his health, or loss of time and deprivation of the society of his family." W PAGE KEETON ET AL., PROSSER AND KEETON ON TORTS § 119, at 887-88 (5th ed. 1984). As in the present case, the longer Manuel remained in jail, the more injuries he suffered. His time in jail prior to legal

process, for just a few days, would not have had such a large impact on his work, his college coursework, and his credit score as his post-legal process detention did.

Additionally, "malicious prosecution claims purvey a forgiving statute of limitations" as the claims do not accrue until the charges terminate in the plaintiff's favor. Williams, *Beyond Police Misconduct*, 43. In the present case, the availability of a malicious prosecution claim and its statute of limitations will determine Manuel's fate. Finally, malicious prosecution allows a plaintiff damages for a claim which might otherwise have been dismissed due to common law immunity. *Id.* For example, a police officer who lies before a grand jury has immunity for his perjury. *Id.* However, the victim will still have a malicious prosecution claim on the basis of the results of the perjury. *Id.* Because of these three key differences, we cannot overstate the importance of access to a federal malicious prosecution claim.

Furthermore, the availability of a Fourth Amendment malicious prosecution claim is also an issue of national importance because of the socio-economic and racial disparities which plague our nation's criminal justice system. Angela J. Davis, *Racial Fairness in the Criminal Justice System: The Role of the Prosecutor*, 39 COLUM. HUM. RTS. L. REV 202, 202-03 (2007). Prosecutors and police officers hold a great deal of power in criminal prosecutions. *Id.* at 205-06. They can easily fabricate and falsify evidence to present the appearance of probable cause before a neutral judge. Margaret Z. Johns, *Reconsidering Absolute Prosecutorial Immunity*, 2005 BYU L. REV. 53, 86 (2005). In the case of countless malicious prosecution claims, government actors have intruded on individuals' Fourth Amendment rights for malicious and racist reasons. *See, e.g., Jones v. City of Chicago*, 856 F.2d 985, 990-91 (7th Cir. 1988).

In *Jones*, George Jones brought a malicious prosecution claim after being charged with rape and murder on the basis of almost no evidence and in light of a number of statements from

one victim denying that Jones was the perpetrator. *Id.* at 988-90. The victim's statements exonerating Jones as well as other exonerating physical evidence were either placed in the police's street files, files which were purposely not handed over to the prosecutor or defense attorney. *Id.* at 989, 991. Jones was exonerated only because of the efforts of one lone police officer, Laverty, who adhered to the principles of "honesty, decency, and justice." *Id.* at 991. Laverty's co-workers threatened to destroy his career if he reported the exonerating evidence. *Id.* at 990. When, despite these threats, he proceeded to write a report with the truth, his report was put in a drawer. *Id.* at 990-91. When he discovered the trial was proceeding, he had the courage to call the court and Jones' defense attorney to report the exonerating information that had been hidden away in undisclosed "street files." *Id.* at 991. The court declared a mistrial and the prosecutor eventually dropped the charges. *Id.* The police department disciplined Laverty for his conduct and destroyed his career. *Id.* We note that had *Jones* arisen after *Albright*, the Seventh Circuit would have reversed the jury verdict in Jones' favor and dismissed his complaint. We also note that, although the heinous treatment of Jones is the stuff about which movies are made and books are written, Manuel spent almost twice as long in jail as Jones did.

Cases like Jones' and other recent events from around the country have called into the question the legitimacy of the criminal justice system. *See* Yoav Sapir, *Neither Intent nor Impact: A Critique of the Racially Based Selective Prosecution Jurisprudence and a Reform Proposal*, 19 HARV BLACKLETTER L.J. 127, 137 (2003). "Many subjects to the system believe they are being discriminated against, and large segments of the population distrust the system. This stems partially from a history of criminal law as an oppressive tool used against minority groups" but also from more recent incidents which favor police discretion over the life and liberty of black suspects. *Id.* Police misconduct destroys the legitimacy of the criminal justice

system, especially for the low-income and minority groups who believe that they have been disenfranchised by the system. Marshall Miller, *Police Brutality*, 17 YALE L. & POL'Y REV. 149, 152 (1998). Such misconduct lessens community trust in authority and "makes the job of delivering police services more dangerous and less effective." *Stop and Frisk in Chicago*, ACLU OF ILL., *available at* http://www.aclu-il.org/wp-content/uploads/2015/03/ACLU_StopandFrisk_6.pdf, 3 (March 2015).

In *Gerstein*, this Court recognized this larger issue when it quoted Justice Frankfurter:

> A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic.

Gerstein v. Pugh, 420 U.S. 103, 118 (1975).

Although the impact of police misconduct and abuse of power may fall more frequently on the poor and people of color, police misconduct knows no bounds. No one is immune. Police misconduct can occur regardless of the victim's socio-economic status or race. Some of the leading cases on this Fourth Amendment issue involve apparent middle class victims who were deprived of their liberty despite not even being involved in a crime.

For example, in *Kingsland v. City of Miami*, a young woman was involved in an automobile accident with an off-duty police officer. 382 F.3d 1220, 1223 (11th Cir. 2004). In an apparent effort to cover up the off-duty officer's negligence, the reporting police officers arrested and detained the young woman, alleging that she showed signs of impairment and was driving under the influence. *Id.* at 1225. Although two breathalyzer tests showed a .00 blood alcohol content, the police officers said she smelled of cannabis. *Id.* at 1224. Although her vehicle was never searched for cannabis and a urinalysis came back negative for cannabis, she was,

remarkably, still charged with driving under the influence. *Id.* at 1125. The charges against her were eventually dropped. *Id.* Even though she was an apparent victim of malicious prosecution, the 11th Circuit held that Kingsland's two trips from New Jersey to Florida to appear for pre-trial hearings did not constitute a seizure within the meaning of the Fourth Amendment. *Id.* at 1236.

Similarly, in *Swartz v. Insogna*, Swartz gave a police officer the middle finger while both were in their respective vehicles. *Swartz*, 704 F.3d at 108. The police officer followed Swartz to his destination and arrested him for "disorderly conduct." *Id.* The Second Circuit held that raising a middle finger did not qualify as disorderly conduct and prosecuting Swartz in such a manner equated to malicious prosecution. *Id.* at 111-12. Here, an apparent middle class individual was afforded the benefits of a malicious prosecution claim based on geography (i.e., he suffered malicious prosecution within the Second Circuit and not the Seventh Circuit).

The very purpose of the Fourth Amendment is to protect our country's citizens from this type of misconduct and abuse of power. Thomas K. Clancy, *The Purpose of the Fourth Amendment and Crafting Rules to Implement that Purpose*, 48 U. RICH. L. REV 479, 497, 512 (2014). It is the role of our federal judiciary to ensure that federal remedies serve as a deterrent against such abuses of power, especially on the basis of race or socio-economic status. Even the Seventh Circuit agrees. As it stated in *Newsome*: "Requiring culpable officers to pay damages to the victims of their actions, however, holds out promise of both deterring and remediating violations of the Constitution." *Newsome*, 256 F.3d at 752. Therefore, the availability of a malicious prosecution claim grounded in the Fourth Amendment is a key issue facing this nation's criminal justice system.

IV. This Case is an Ideal Vehicle to Decide the Conflict.

This case is an ideal vehicle to decide the conflict because the facts clearly demonstrate that Manuel would have access to a Fourth Amendment malicious prosecution claim under all formulations of the claim in all of the circuits where it is recognized. Manuel, after all, was subject to a true seizure–prison–without probable cause.

Moreover, based upon the legal posture of this case, Manuel's malicious prosecution claim can only succeed as a Fourth Amendment claim. Manuel filed his claims, *pro se*, more than two years after his arrest, unaware of the Maginot Line of various statutes of limitations standing in his path. Although he had a Section 1983 false arrest and imprisonment claim, these claims were barred by the statute of limitations. Pet. App. A-2 ("The court dismissed most of the § 1983 claims as time barred."). Manuel also does not have a procedural due process Section 1983 for malicious prosecution claim because he has an adequate state law remedy. Pet. App. A-4 ("Only if state law fails to provide an adequate remedy can a plaintiff pursue a federal due process claim for malicious prosecution and Illinois has an adequate remedy."). But his state malicious prosecution claim is also barred due to Illinois' one-year statute of limitations for actions against local government officials and entities. *See* 745 ILCS 10/8-101.

Therefore, if Manuel is to have an opportunity to be compensated for his injuries, Manuel must turn to the Fourth Amendment as a means to bring a Section 1983 malicious prosecution claim. A malicious prosecution claim does not accrue, and thus the statute of limitations does not begin to run, until the criminal charges giving rise to the claim terminate in favor of the plaintiff. *Julian*, 732 F.3d at 845 (citing *Heck v. Humphrey*, 512 U.S. 477, 484 (1994); *see Wallace v. Kato*, 549 U.S. at 388 ("[I]t is the standard rule that accrual occurs when the plaintiff has a complete and present cause of action.") (internal quotations omitted); *Johnson*, 575 F.3d at 659

(listing the common law elements of a malicious prosecution claim in Illinois, including that the charges terminate in favor of the plaintiff).

Finally, the Seventh Circuit expressly reaffirmed its decision in *Newsome* and explicitly ruled in its opinion below that it does not recognize a Fourth Amendment malicious prosecution claim. Time and time again, the Seventh Circuit has been given the opportunity to recognize a Fourth Amendment malicious prosecution claim. On many occasions, the Seventh Circuit dodged the issue. First, in *Newsome*, the Court adopted the rule that an individual only has a Section 1983 malicious prosecution claim if state law fails to provide an adequate remedy. *Newsome*, 256 F.3d at 750-51. However, the court later noted: "*Newsome* left open the possibility of a Fourth Amendment claim against officers who misrepresent evidence to prosecutors." *Johnson*, 575 F.3d at 663. Then, in *Julian v. Hanna*, the Seventh Circuit was given the opportunity to reexamine its outlier stance but it chose not to do so. *Julian*, 732 F.3d at 846. Instead, as Judge Posner wrote in *Julian*, the facts would give Julian a claim under both the Fourth Amendment and the due process clause, or neither. *Id.* For that reason, the court opted not to decide the Fourth Amendment issue.[4] *Id.*

In *Llovet v. City of Chicago*, an Illinois case involving a different factual situation than the instant case, the Seventh Circuit was again given the opportunity to revisit *Newsome*. In *Llovet*, the plaintiff acknowledged that he was arrested, upon probable cause, for a misdemeanor. Llovet further alleged, however, that his detention was unreasonably prolonged when he was charged, without probable cause, for a more serious felony offense. *Llovet v. City of Chicago*, 761 F.3d 759, 762 (7th Cir. 2014), *cert. denied* 135 S. Ct. 1185 (2015). Judge Posner, again

[4] As the malicious prosecution at issue in *Julian* took place in Indiana, a state without an adequate state law remedy, the Seventh Circuit granted Julian Section 1983 relief.

writing for the court, acknowledged that "most federal courts of appeals hold that section 1983 authorizes a federal claim of malicious prosecution, regardless of what alternative remedy a state provides." *Id.* at 761. Instead of adopting the majority rule or embracing its outlier status, the Seventh Circuit avoided the issue again by saying that it was "no outlier." *Id.* at 763. It was not until the opinion below that the Seventh Circuit finally, and openly, reaffirmed its *Newsome* holding. Pet. App. A-3.

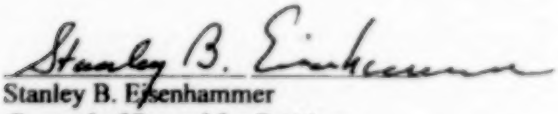
The facts in the present case are different from the facts in *Llovet*. As the Seventh Circuit acknowledged: "*Llovet* is largely about the theory of 'continuing seizures' and thus distinguishable from Manuel's facts." Pet. App. A-4. Petitioner Manuel was arrested without probable cause, in violation of the Fourth Amendment, and was held pursuant to legal process without probable cause, again in violation of the Fourth Amendment. The Seventh Circuit long attempted to evade the impact of its decision in *Newsome* but, when faced with the facts in the present case, it could no longer do so, holding: "When, after the arrest or seizure, a person is not let go when he should be, the Fourth Amendment gives way to the due process clause as a basis for challenging his detention." Pet. App. A-3 (internal citations omitted). Instead of again evading the issue, the Seventh Circuit openly rejected a Fourth Amendment malicious prosecution claim. Now that the Seventh Circuit has explicitly rejected recognizing such a claim, even when the plaintiff is seized without probable cause, this Court should take the opportunity to decide whether or not such a claim exists.

Therefore, this case is the ideal vehicle to decide this issue not only because of the facts involved in Manuel's malicious prosecution, including his true liberty deprivation, but also because the Seventh Circuit has finally acknowledged and affirmed its outlier status.

CONCLUSION

In *Albright v. Oliver*, a majority of this Court found that Albright's claim should be analyzed under the Fourth Amendment. The Court, however, did not answer the question the Petitioner brings forth today because Albright failed to raise the question in his appeal. Petitioner is here because, contrary to ten other circuits, the Seventh Circuit chose to adhere to the concurring opinion of only two of the Justices in *Albright*. Therefore, we respectfully request that this Court grant this petition for a writ of certiorari to resolve a recurring issue of national importance and to settle the long-standing conflict among the circuit courts of appeal as to the availability of a Fourth Amendment malicious prosecution claim. Until this Court takes up the issue, a victim's access to a federal remedy for a violation of his Fourth Amendment right to be free from unreasonable seizure will continue to be determined by the happenstance of geography.

Respectfully submitted,



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NO._____

In The
Supreme Court of the United States

ELIJAH MANUEL,

Petitioner,

v.

CITY OF JOLIET, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONER'S APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with Fed. R. App. P 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued December 16, 2014
Decided January 28, 2015

Before

DIANE P WOOD, *Chief Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

JOHN DANIEL TINDER, *Circuit Judge*

No. 14-1581

ELIJAH MANUEL,
Plaintiff-Appellant,

v.

CITY OF JOLIET, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 13 C 3022

Milton I. Shadur,
Judge.

ORDER

Elijah Manuel appeals the dismissal of his complaint under 42 U.S.C. § 1983 alleging that the City of Joliet and several of its police officers maliciously prosecuted him when they falsified the results of drug tests and then arrested him for possession with intent to distribute ecstasy. The district court dismissed his claim as foreclosed by *Newsome v. McCabe*, 256 F.3d 747, 750–52 (7th Cir. 2001), because Illinois law already provided an adequate remedy for malicious prosecution. Manuel asks this court to reconsider *Newsome* but offers no compelling reason to do so. We affirm.

Manuel alleged the following in connection with his arrest on March 18, 2011 for possession with intent to distribute ecstasy. On that day he was a passenger in his car

being driven by his brother when they were stopped for failing to signal. A police officer detected an odor of burnt cannabis from inside the car. Without warning, the officer flung open the passenger's door and dragged Manuel out. The officer pushed Manuel to the ground, handcuffed him, and then punched and kicked him. The officer then patted down Manuel, and in one pocket found a bottle of pills. The pills were then tested by officers who had arrived at the scene, and these officers falsified the results to show that the pills were ecstasy. Based on these results, Manuel was arrested. In grand jury proceedings on March 31, the police continued to lie about the test results.

But according to a lab report of April 1, 2011, that Manuel submitted with his complaint, the pills were not ecstasy. Yet Manuel was arraigned on April 8, 2011, and not for more than a month—until May 4, 2011—did the Assistant State's Attorney seek dismissal of the charges. Manuel was released the next day. Because of his incarceration, Manuel missed work and his college classes, forcing him to drop courses he already paid for.

On April 10, 2013, Manuel sued the City of Joliet and various City of Joliet police officers alleging malicious prosecution because of the falsified drug tests and other civil rights claims that stemmed from his arrest (unreasonable search and seizure, excessive force, violation of due process rights, conspiracy to deprive constitutional rights, unreasonable detention, failure to intervene, and denial of equal protection of laws).

The court dismissed most of the § 1983 claims as time-barred because they fell outside the two-year statute of limitations. As for the malicious-prosecution claim—which was not time-barred because the statute of limitations did not begin tolling until May 4, 2011, when the underlying proceedings were terminated in Manuel's favor—the court treated it as barred under *Newsome* because Illinois law provided an adequate remedy.

On appeal Manuel challenges only the dismissal of his malicious-prosecution claim and argues that the claim, as one in which the police misrepresented evidence, fits into an area of law that *Newsome* did not foreclose. He invokes *Johnson v. Saville*, 576 F.3d 656, 663 (7th Cir. 2009), in which we stated that "*Newsome* left open the possibility of a Fourth Amendment claim against officers who misrepresent evidence to prosecutors."

Newsome held that federal claims of malicious prosecution are founded on the right to due process, not the Fourth Amendment, and thus there is no malicious

prosecution claim under federal law if, as here, state law provides a similar cause of action. *Newsome*, 256 F.3d at 750–51; *see Julian v. Hanna*, 732 F.3d 842, 845–46 (7th Cir. 2013). *Newsome* did not preclude Fourth Amendment claims generally, but we have cautioned that "there is nothing but confusion gained by calling [a] legal theory [brought under the Fourth or any other amendment] 'malicious prosecution.'" *Parish v. City of Chicago*, 594 F.3d 551, 554 (7th Cir. 2009) (quoting *Newsome*, 256 F.3d at 751) (internal quotation omitted); *see also McCullach v. Gadert*, 344 F.3d 655, 659 (7th Cir. 2003) (recognizing a Fourth Amendment wrongful-arrest claim against an officer who allegedly gave false information in an incident report and at a preliminary hearing). As the district court noted, any Fourth Amendment claim that Manuel might bring is time-barred. Fourth Amendment claims are typically "limited up to the point of arraignment," after which it becomes a malicious prosecution claim. *Bielanski v. County of Kane*, 550 F.3d 632, 638 (7th Cir. 2008). Thus if Manuel has a Fourth Amendment claim not barred by *Newsome*, it would have stemmed from his arrest on March 18, 2011, which he would have had to challenge within two years, *see* 735 ILCS 5/13-202, but he did not sue until April 10, 2013. And in any event, Manuel has no Fourth Amendment right to be free from groundless prosecution. *Bielanski*, 550 F.3d at 638; *Ray v. City of Chicago*, 629 F.3d 660, 664 (7th Cir. 2011).

Next Manuel argues that we should reconsider our holding in *Newsome* and recognize a federal claim for malicious prosecution under the Fourth Amendment regardless of the available state remedy. By his count, ten other circuits have recognized federal malicious-prosecution claims under the Fourth Amendment—assuming that the plaintiff has been seized in the course of the malicious prosecution. *See Julian v. Hanna*, 732 F.3d 842, 846 (7th Cir. 2013) (collecting cases); *Hernandez-Cuevas v. Taylor*, 723 F.3d 91, 98–99 (1st Cir. 2013) ("there is now broad consensus among the circuits that the Fourth Amendment right to be free from seizure but upon probable cause extends through the pretrial period.")

Manuel does not provide a compelling reason to overrule our precedent. *See United States v. Reyes-Hernandez*, 624 F.3d 405, 412 (7th Cir. 2010) (setting forth standard for overturning circuit precedent); *United States v. Corner*, 598 F.3d 411, 414 (7th Cir. 2010). As we stated in our most recent endorsement of *Newsome's* rationale: "When, after the arrest or seizure, a person is not let go when he should be, the Fourth Amendment gives way to the due process clause as a basis for challenging his detention." *Llovet*, 761 F.3d at 764. While Manuel's counsel advanced a strong argument, given the position we have consistently taken in upholding *Newsome*, *see*

Llovet v. City of Chicago, 761 F.3d 759, 760 (7th Cir. 2014); *Ray*, 629 F.3d at 664; *Parish*, 594 F.3d at 554, Manuel's argument is better left for the Supreme Court.

Manuel tries to distinguish *Llovet* on grounds that he was arrested without probable cause and incarcerated for seven weeks. Although *Llovet* is largely about the theory of "continuing seizures" and thus distinguishable from Manuel's facts, we said in that case that "once detention by reason of arrest turns into detention by reason of arraignment...the Fourth Amendment falls out of the picture and the detainee's claim that the detention is improper becomes a claim of malicious prosecution violative of due process." 761 F.3d at 763. Only if state law fails to provide an adequate remedy can a plaintiff pursue a federal due process claim for malicious prosecution, *id.* at 764; *cf. Julian*, 732 F.3d at 846 (Indiana did not have an adequate remedy for malicious-prosecution claim), and Illinois has an adequate remedy. *Ray*, 629 F.3d at 664.

AFFIRMED.

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
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FINAL JUDGMENT

January 28, 2015

Before: DIANE P. WOOD, Chief Judge
ILANA DIAMOND ROVNER, Circuit Judge
JOHN DANIEL TINDER, Circuit Judge

No. 14-1581	ELIJAH MANUEL, Plaintiff - Appellant v. CITY OF JOLIET, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:13-cv-03022 **Northern District of Illinois, Eastern Division** **District Judge Milton I. Shadur**	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

form name: c7_FinalJudgment(form ID: 132)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ELIJAH MANUEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13 C 3022
	)	
CITY OF JOLIET, a municipal corporation, et al.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM ORDER

Elijah Manuel ("Manuel"), who originally launched this action with a self-prepared detailed narrative submitted under the heading "Complaint Under the Civil Rights Act, Title 42 Section 1983 U.S. Code," is now represented by able counsel designated by this Court to serve him pro bono publico. Now the First Amended Complaint ("FAC") recently prepared by counsel on Manuel's behalf has been targeted by two Fed. R. Civ. P. ("Rule") 12(b)(6) motions to dismiss, and late last week Manuel's counsel filed what they label as "Plaintiff's Modified Response in Opposition to Defendants' 12(b)(6) Motion To Dismiss." Because the parties have met head-on in those submissions, the motions are ripe for decision.

Both Rule 12(b)(6) motions focus primarily on a statute-of-limitations bar, pointing (1) to Section 1983's adoption of the two-year statute of limitations for Illinois-based personal injury claims and (2) to the fact that Manuel's original pro se Complaint was brought more than two years after the occurrences that constitute the gravamen of Manuel's Section 1983 claims. Because this Court's earlier oral ruling rejected the other contentions advanced by Manuel's counsel, the most recent submission on Manuel's behalf urges denial of the motions only

"because plaintiff has a non-time-barred Fourth Amendment or Due Process claim" (Response at 2). And when the Response memorandum gets down to the precise issues, it focuses solely on the contention that the "Plaintiff should have an actionable Section 1983 claim for malicious prosecution through the Fourth Amendment" (id. at 4).

On that score Manuel's counsel are totally candid. Their Response at 5 states accurately:

> The Seventh and Eighth Circuits stand alone in deciding that malicious prosecution claims are not actionable as a Fourth Amendment Section 1983 claim. *Newsome v. McCabe*, 256 F. 3d 747, 750 (7th Cir. 2001); *Kurtz v. City of Shrewsbury*, 245 F. 3d 753, 758 (8th Cir. 2001).

As for our Court of Appeals' stance on the subject, the Response goes on to state (also accurately) that the Newsome case "holds that Section 1983 malicious prosecution claims are only cognizable as a substantive due process claim if state law does not provide an adequate remedy" -- and to close the analytical circle, our Court of Appeals has expressly held that Illinois law does provide such a remedy.

What Manuel's counsel must argue then -- and they do with vigor -- is that Newsome should be revisited and "rejected in the present case." That invitation to a District Judge to override the studied adherence by our Court of Appeals to a position that it knows to be a lonely one (see Judge Richard Posner's recent opinion for the panel in Julian v. Hanna, 732 F. 3d 842, 845-46 (7th Cir. 2013)) has put this Court in mind of an even more recent opinion written by Judge Posner that affirmed this Court's decision in a complex case (Inland Mortgage Capital Corp. v. Chivas Retail Partners, No. 12-3648, 2014 WL 310355 (7th Cir. Jan. 29)) and concluded in this fashion (id. at *3):

> What a topsy-turvy world the defense rightly rejected by the district court would create!

This Court likewise rejects the invitation by Manuel's counsel to create still another topsy-turvy world -- if a change from Newsome and its progeny is to be made, it must be left to our Court of Appeals to do so.

Accordingly both Rule 12(b)(6) motions are granted. And (1) because the limitations bar erected by Section 1983 cannot be overcome by a nonviable Illinois-based federal malicious prosecution claim and (2) because the most recent response from Manuel's counsel has not suggested any other tenable basis for the survival of his claims, this action is dismissed as well.

/s/ Milton I. Shadur
Milton I. Shadur
Senior United States District Judge

Date: February 12, 2014

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

ELIJAH MANUEL – PETITIONER

VS.

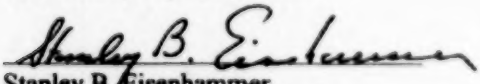
CITY OF JOLIET, ET AL.- RESPONDENT(S)

PROOF OF SERVICE

I, Stanley B. Eisenhammer, an attorney, do swear or declare that on this 23rd day of April 2015, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents properly addressed to each of them by delivery to a third-party commercial carrier for delivery within 3 calendar days. The names and addresses of those served are as follows:

John P Wise
City of Joliet Legal Department
150 West Jefferson Street
Joliet, IL 60432

I declare under penalty of perjury that the foregoing is true and correct.
Executed on April 23, 2015.



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